

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

In Re:

Critical Power Exchange, LLC,

Debtor.

Case No: 18-12037-CMA

Adversary No. 19-01019-CMA

Edmund J. Wood, Trustee, Trustee of the
Bankruptcy Estate of Critical Power Exchange,
LLC,

Plaintiff,

v.

Invest West Capital, LLC,

Defendant.

**DEFENDANT’S ANSWER TO
COMPLAINT FOR AVOIDANCE AND
RECOVERY OF FRAUDULENT
TRANSFERS**

COMES NOW Defendant Invest West, LLC (“Invest West”) and hereby answers the allegations of Plaintiff’s Complaint as follows:

1. In response to Paragraph 1.1 of the Complaint, Invest West denies all allegations.
2. In response to Paragraph 1.2 of the Complaint, Invest West denies all allegations.

1 3. In response to Paragraph 2.1 of the Complaint, Invest West lacks
2 sufficient information to admit or deny the allegations contained in Paragraph 2.1, but assumes
3 the allegation is truthfully stated.

4 4. In response to Paragraph 2.2 of the Complaint, Invest West admits only
5 that Invest West is a Limited Liability Company formed under the laws of the State of
6 Washington, as to the remaining allegations Defendant denies the same.

7 5. In response to Paragraph 2.2.1 of the Complaint, Invest West admits only
8 that Robert Hild owns 25% interest in Invest West. Invest West lacks sufficient information
9 to admit or deny the allegations contained in the Paragraph 2.2.1 and therefore denies the same.

10 6. In response to Paragraph 2.2.2 of the Complaint, Invest West admits only
11 that Invest West is a co-investor in Critical Power Partners, L.P. ("CP Partners"), and that CP
12 Partners is a limited partnership formed under the laws of the State of California. Invest West
13 lacks sufficient information to admit or deny the remaining allegations contained in Paragraph
14 2.2.2 and therefore denies the same.

15 7. In response to Paragraph 2.2.3 of the Complaint, Invest West admits only
16 that CP Partners owns 75% interest in the Debtor. Invest West lacks sufficient information to
17 admit or deny the remaining allegations contained in the Paragraph 2.2.3 and therefore denies
18 the same.

19 8. In response to Paragraph 2.2.4 of the Complaint, Invest West denies all
20 allegations.

21 9. In response to Paragraph 3.1 of the Complaint, Invest West incorporates
22 by this reference the responses set forth in paragraphs 1 through 8 as if fully set forth herein.

23 10. In response to Paragraph 3.2 of the Complaint, Invest West admits the
24 allegations.

25 11. In response to Paragraph 3.3 of the Complaint, Invest West admits the
26 allegations.

27 12. Paragraph 3.4 of the Complaint does not contain any allegations that
28 necessitate Invest West's response.

29 13. In response to Paragraph 4.1 of the Complaint, Invest West incorporates
30 by this reference the responses set forth in paragraphs 1 through 12 as if fully set forth herein.

1 14. In response to Paragraph 4.2 of the Complaint, Invest West lacks
2 sufficient information to admit or deny the allegations contained in the Paragraph 4.2 and
3 therefore denies the same.

4 15. In response to Paragraph 4.3 of the Complaint, Invest West admits only
5 that, in 2002, CP Partners acquired a 75% interest in the Debtor. Invest West denies the
6 remaining allegations contained in Paragraph 4.3.

7 16. In response to Paragraph 4.4 of the Complaint, Invest West lacks
8 sufficient information to admit or deny the allegations contained in the Paragraph 4.4 and
9 therefore denies the same.

10 17. In response to Paragraph 4.5 of the Complaint, Invest West lacks
11 sufficient information to admit or deny the allegations contained in the Paragraph 4.5 and
12 therefore denies the same.

13 18. In response to Paragraph 4.6 of the Complaint, Invest West admits only
14 that the Debtor undertook debt obligations. Invest West lacks sufficient information to admit
15 or deny the remaining allegations contained in Paragraph 4.6 and therefore denies the same.

16 19. In response to Paragraph 4.7 of the Complaint, Invest West lacks
17 sufficient information to admit or deny the allegations contained in the Paragraph 4.7 and
18 therefore denies the same.

19 20. In response to Paragraph 4.8 of the Complaint, Invest West admits only
20 that the Debtor undertook debt obligations in the principal amount of at least \$1.425 million.
21 Invest West lacks sufficient information to admit or deny the remaining allegations contained
22 in Paragraph 4.8 and therefore denies the same.

23 21. In response to Paragraphs 4.9 – 4.16 of the Complaint, Invest West's
24 responses are the same as set forth above with respect to the allegations of Paragraph 4.4 of
25 the Complaint.

26 22. In response to Paragraph 4.17 of the Complaint, Invest West admits only
27 that the Debtor assigned certain rights and interests to Invest West. Invest West lacks sufficient
28 information to admit or deny the remaining allegations contained in Paragraph 4.17 and
29 therefore denies the same.

30 23. In response to Paragraph 4.18 of the Complaint, Invest West lacks

1 sufficient information to admit or deny the allegations contained in the Paragraph 4.18 and
2 therefore denies the same.

3 24. In response to Paragraphs 4.19 – 4.33 of the Complaint, Invest West’s
4 responses are the same as set forth above with respect to the allegations of Paragraph 4.18 of
5 the Complaint.

6 25. In response to Paragraph 4.34 of the Complaint, Invest West admits only
7 that the Debtor entered into an Asset Purchase Agreement (the “APA”), which agreement
8 speaks for itself and requires no further answer. Invest West lacks sufficient information to
9 admit or deny the remaining allegations contained in Paragraph 4.34 and therefore denies the
10 same.

11 26. In response to Paragraphs 4.34.1 – 4.39.2 of the Complaint, Invest West’s
12 responses are the same as set forth above with respect to the allegations of Paragraph 4.18 of
13 the Complaint.

14 27. In response to Paragraph 4.40 of the Complaint, Invest West admits only
15 that the Debtor and Invest West entered into an agreement involving Debtor assigning certain
16 rights and interests to Invest West (the “Assignment”), which agreement speaks for itself and
17 requires no further answer. Invest West lacks sufficient information to admit or deny the
18 remaining allegations contained in Paragraph 4.40 and therefore denies the same.

19 28. In response to Paragraphs 4.40.1 – 4.40.3 of the Complaint, Invest West’s
20 responses are the same as set forth above with respect to the allegations of Paragraph 4.18 of
21 the Complaint. The Assignment speaks for itself and requires no further answer.

22 29. In response to Paragraph 4.41 of the Complaint, Invest West admits only
23 that the Debtor owes at least \$1.425 million. The Assignment speaks for itself and requires no
24 further answer. Invest West lacks sufficient information to admit or deny the remaining
25 allegations contained in Paragraph 4.41 and therefore denies the same.

26 30. In response to Paragraph 4.42 of the Complaint, Invest West lacks
27 sufficient information to admit or deny the allegations contained in the Paragraph 4.42 and
28 therefore denies the same.

29 31. In response to Paragraph 4.43 of the Complaint, Invest West admits only
30 that the Debtor assigned certain rights and interests to Invest West in exchange for forgiveness

1 of certain antecedent debt. The Assignment speaks for itself and requires no further answer.
2 Invest West lacks sufficient information to admit or deny the remaining allegations contained
3 in Paragraph 4.43 and therefore denies the same.

4 32. In response to Paragraph 4.44 of the Complaint, Invest West admits only
5 that the Debtor assigned rights and interests in certain accounts receivable to Invest West. The
6 Assignment speaks for itself and requires no further answer. Invest West lacks sufficient
7 information to admit or deny the remaining allegations contained in Paragraph 4.44 and
8 therefore denies the same.

9 33. In response to Paragraph 4.45 of the Complaint, Invest West lacks
10 sufficient information to admit or deny the allegations contained in the Paragraph 4.45 and
11 therefore denies the same.

12 34. In response to Paragraphs 4.46 – 4.47 of the Complaint, Invest West's
13 responses are the same as set forth above with respect to the allegations of Paragraph 4.45 of
14 the Complaint.

15 35. In response to Paragraph 4.48 of the Complaint, Invest West admits only
16 that the February 2018 Payment has been placed in the trust account of Invest West's counsel.
17 Invest West lacks sufficient information to admit or deny the remaining allegations contained
18 in Paragraph 4.48 and therefore denies the same.

19 36. In response to Paragraph 4.49 of the Complaint, Invest West denies all
20 allegations.

21 37. In response to Paragraph 4.50 of the Complaint, Invest West lacks
22 sufficient information to admit or deny the allegations contained in the Paragraph 4.50 and
23 therefore denies the same.

24 38. In response to Paragraph 4.51 of the Complaint, Invest West denies all
25 allegations.

26 39. In response to Paragraphs 4.52 – 4.60.2 of the Complaint, Invest West's
27 responses are the same as set forth above with respect to the allegations of Paragraph 4.45 of
28 the Complaint.

29 40. In response to Paragraph 5.1 of the Complaint, Invest West incorporates
30 by this reference the responses set forth in paragraphs 1 through 39 as if fully set forth herein.

1 41. In response to Paragraph 5.2 of the Complaint, Invest West lacks
2 sufficient information to admit or deny the allegations contained in the Paragraph 5.2 and
3 therefore denies the same.

4 42. In response to Paragraphs 5.3 – 5.7 of the Complaint, Invest West's
5 responses are the same as set forth above with respect to the allegations of Paragraph 5.2 of
6 the Complaint.

7 43. In response to Paragraph 5.8 of the Complaint, Invest West denies all
8 allegations.

9 44. In response to Paragraph 5.9 of the Complaint, Invest West lacks
10 sufficient information to admit or deny the allegations contained in the Paragraph 5.9 and
11 therefore denies the same.

12 45. In response to Paragraph 5.10 of the Complaint, Invest West denies all
13 allegations.

14 46. In response to Paragraph 5.11 of the Complaint, Invest West denies all
15 allegations.

16 47. In response to Paragraph 5.12 of the Complaint, Invest West denies all
17 allegations.

18 48. In response to Paragraph 6.1 of the Complaint, Invest West incorporates
19 by this reference the responses set forth in paragraphs 1 through 47 as if fully set forth herein.

20 49. In response to Paragraph 6.2 of the Complaint, Invest West lacks
21 sufficient information to admit or deny the allegations contained in the Paragraph 6.2 and
22 therefore denies the same.

23 50. In response to Paragraphs 6.3 – 6.6 of the Complaint, Invest West's
24 responses are the same as set forth above with respect to the allegations of Paragraph 6.2 of
25 the Complaint.

26 51. In response to Paragraph 6.7 of the Complaint, Invest West denies all
27 allegations.

28 52. In response to Paragraph 6.8 of the Complaint, Invest West lacks
29 sufficient information to admit or deny the allegations contained in the Paragraph 6.8 and
30 therefore denies the same.

1 53. In response to Paragraph 6.9 of the Complaint, Invest West lacks
2 sufficient information to admit or deny the allegations contained in the Paragraph 6.9 and
3 therefore denies the same.

4 54. In response to Paragraph 6.10 of the Complaint, Invest West denies all
5 allegations.

6 55. In response to Paragraph 6.11 of the Complaint, Invest West denies all
7 allegations.

8 56. In response to Paragraph 6.12 of the Complaint, Invest West denies all
9 allegations.

10 57. In response to Paragraph 7.1 of the Complaint, Invest West incorporates
11 by this reference the responses set forth in paragraphs 1 through 56 as if fully set forth herein.

12 58. In response to Paragraph 7.2 of the Complaint, Invest West lacks
13 sufficient information to admit or deny the allegations contained in the Paragraph 7.2 and
14 therefore denies the same.

15 59. In response to Paragraphs 7.3 – 7.7 of the Complaint, Invest West's
16 responses are the same as set forth above with respect to the allegations of Paragraph 7.2 of
17 the Complaint.

18 60. In response to Paragraph 7.8 of the Complaint, Invest West denies all
19 allegations.

20 61. In response to Paragraph 7.9 of the Complaint, Invest West lacks
21 sufficient information to admit or deny the allegations contained in the Paragraph 7.9 and
22 therefore denies the same.

23 62. In response to Paragraph 7.10 of the Complaint, Invest West lacks
24 sufficient information to admit or deny the allegations contained in the Paragraph 7.10 and
25 therefore denies the same.

26 63. In response to Paragraph 7.11 of the Complaint, Invest West denies all
27 allegations.

28 64. In response to Paragraph 7.12 of the Complaint, Invest West denies all
29 allegations.

30 65. In response to Paragraph 7.13 of the Complaint, Invest West denies all

1 allegations.

2 66. In response to Paragraph 8.1 of the Complaint, Invest West incorporates
3 by this reference the responses set forth in paragraphs 1 through 65 as if fully set forth herein.

4 67. In response to Paragraph 8.2 of the Complaint, Invest West lacks
5 sufficient information to admit or deny the allegations contained in the Paragraph 8.2 and
6 therefore denies the same.

7 68. In response to Paragraphs 8.3 – 8.7 of the Complaint, Invest West's
8 responses are the same as set forth above with respect to the allegations of Paragraph 8.2 of
9 the Complaint.

10 69. In response to Paragraph 8.8 of the Complaint, Invest West denies all
11 allegations.

12 70. In response to Paragraph 8.9 of the Complaint, Invest West denies all
13 allegations.

14 71. In response to Paragraph 8.10 of the Complaint, Invest West lacks
15 sufficient information to admit or deny the allegations contained in the Paragraph 8.10 and
16 therefore denies the same.

17 72. In response to Paragraph 8.11 of the Complaint, Invest West denies all
18 allegations.

19 73. In response to Paragraph 8.12 of the Complaint, Invest West denies all
20 allegations.

21 74. In response to Paragraph 8.13 of the Complaint, Invest West admits only
22 that the Debtor assigned certain rights and interests to Invest West in exchange for forgiveness
23 of certain antecedent debt. Invest West lacks sufficient information to admit or deny the
24 remaining allegations contained in Paragraph 8.13 and therefore denies the same.

25 75. In response to Paragraph 8.14 of the Complaint, Invest West denies all
26 allegations.

27 76. In response to Paragraph 8.15 of the Complaint, Invest West denies all
28 allegations.

29 77. Invest West denies any and all allegations not expressly admitted herein.
30

1 **AFFIRMATIVE DEFENSES**

2 Having answered the allegations of Plaintiff's Complaint, Invest West hereby asserts the
3 following affirmative defenses.

- 4 1. The Complaint fails to state a claim upon which relief can be granted.
5 2. Equitable and/or Promissory Estoppel.
6 3. Fault of third parties.
7 4. Failure to mitigate damages.
8 5. Failure to join necessary party(ies).
9 6. Plaintiff has failed to satisfy one or more conditions precedent.
10 7. Assumption of risk.
11 8. Justification. Defendant had just cause for its actions.
12 9. Payment.
13 10. Laches.
14 11. Unclean hands.
15 12. Unjust enrichment.
16 13. Waiver.
17 14. Setoff.
18 15. Statute of Frauds.
19 16. Statute of Limitations.
20 17. Such other affirmative defenses that may be discovered over the course of
21 discovery.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, Invest West respectfully requests the following relief:

- 24 (a) For Plaintiff to take nothing by way of its Complaint;
25 (b) For dismissal of Plaintiff's Complaint with prejudice and without costs;
26 (b) For judgment in Invest West's favor;
27 (c) For attorneys' fees and costs; and
28 (d) For such other and further relief as this Court deems just and equitable.
29
30

RESPECTFULLY SUBMITTED this 21st day of June 2019.

ROMERO PARK P.S.

/s/H. Troy Romero

H. Troy Romero, WSBA #19044

Attorney for Defendant

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DEFENDANT'S ANSWER - 10

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Bellevue, WA98004-5901

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PROOF OF SERVICE VIA ECF

I, Kathy Koback, certify and declare as follows:

I am a citizen of the United States and a resident of the State of Washington. I am over the age of 18 years and not a party to the within-entitled cause. I am an employee with the law firm of Romero Park P.S., whose address is 155 – 108th Avenue NE, Suite 202, Bellevue, Washington 98004.

On June 21, 2019, at my place of business in Bellevue, Washington, a copy of the attached document described as:

DEFENDANT’S ANSWER TO COMPLAINT FOR AVOIDANCE AND RECOVERY OF FRAUDULENT TRANSFERS

was sent via electronic service through the Court’s ECF service for delivery and addressed to:

Attorneys for Chapter 7 Trustee Edmund J. Wood:

Deborah A. Crabbe, WSBA #22263
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____ Hand Delivery
____ U.S. Mail
____ Overnight Mail
____ Facsimile
 x Email - ECF

I certify and declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 21st day of June 2019.

ROMERO PARK P.S.

/s/Kathy Koback

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